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45848 7590 06/24/2009 MICHAEL WINFIELD GOLTRY 4000 N. CENTRAL AVENUE, SUITE 1220 PHOENIX, AZ 85012				
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL L. DENBY

Appellant

Appeal 2009-003065
Application 09/546,502
Technology Center 3600

Decided¹: June 24, 2009

Before JAMESON LEE, SALLY GARDNER LANE, and SALLY C.
MEDLEY *Administrative Patent Judges*.

LANE, *Administrative Patent Judge*.

DECISION ON APPEAL

Statement of the Case

The appeal, under 35 U.S.C. § 134(a), is from a Non-Final Rejection of Appellant's claims 1-3 and 37-41. Claims 4-36 have been canceled. (App. Br. 3). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

The real party in interest is said to be applicant Michael L. Denby.
(App. Br. 2).

Appellant's application is directed to a connection for a fishing lure.

The Examiner relied on the following references:

<u>Name</u>	<u>Number</u>	<u>Issue Date</u>
McMahon	578,762	March 16, 1897
Drosdak	4,864,767	September 12, 1989
Drosdak	5,469,652	November 28, 1995

The Examiner rejected claims 1-3 and 37 under 35 U.S.C.

§ 103(a) over McMahon and Drosdak '652. Appellant does not provide any separate arguments for the patentability of claims 2, 3, and 37, which depend on claim 1. We review claim 1 as a representative claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner rejected claims 38-41 under 35 U.S.C. § 103(a) over Drosdak '767 and Drosdak '652. Appellant did not provide any separate argument for the patentability of claims 39-41, which depend on claim 38. We review claim 38 as a representative claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

I. PRINCIPLES OF LAW

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l v. Teleflex Inc.*, 550 US 398, 416 (2007). "[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *Id.* at 417 (quoting *Sakraid v. Ag Pro, Inc.*, 425 US 273 (1976)).

II. ISSUE

Would those of skill in the art have combined the device of Drosdak '652 with the device of either McMahon or Drosdak '767?

III. FINDINGS OF FACT AND ANALYSIS

Claim 1

Findings of Fact

1. Appellant's claim 1 recites:

Apparatus for receiving and securing an end segment of a line comprising:

a body including a receptacle having inwardly directed extensions, an open first end leading to the receptacle and an opposing second end;

the receptacle capable of receiving therein and the extensions impinging thereagainst the end segment; and

a pair of resilient hooks attached to the second end of the body and disposed in an overlapping state forming a continuous loop in which a lure is engagable to the coupler by forcing the hooks apart and threading one of the hooks into and through a hook eye of the lure.

(App. Br. 20, Claims App'x.).

2. Figure 2 of Appellants' specification is reproduced below.

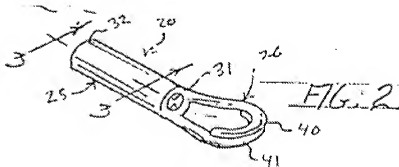


Figure 2 depicts a connector with a receptacle (25) and a coupler (26).

(Spec. 14, ll. 9-12).

3. Figure 3 of Appellants' specification is reproduced below.

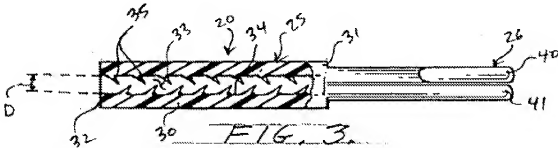


Figure 3 depicts a cross-section of the receptacle (25) with an open end (32) and an opposing end (31). (Spec. 14, ll. 14-17). The receptacle (25) has extensions or teeth (35) that extend away from the open end (32). (Spec. 14, l. 21, through 15, l. 1).

4. Figure 2 of Drosdak '652 is reproduced below.

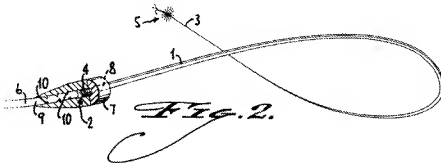


Figure 2 depicts a leader (1) for a fishing line connected to a connector (7) that has an open end and an opposing end. The body of the connector (7) has a socket (9) with inwardly extending teeth or barbs (10). (Drosdak '652 col. 2, ll. 52-62).

5. Drosdak explains that lead and connector allow for easy attachment of a second line, without the need for tying knots. (Drosdak col. 1, l. 64, through col. 2, l. 4).

6. Figure 1 of McMahon is reproduced below.

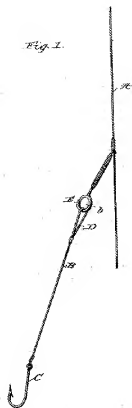


Figure 2 depicts a fishing-line equipped with an attachment (E). (McMahon II, 42-44).

7. Figure 2 of McMahon is reproduced below.

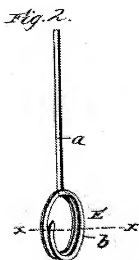


Figure 2 depicts the fishing-line attachment device (E) with an eye (b) which is made of a coiled piece of wire and is resilient. (McMahon ll. 51-55).

8. McMahon explains that a fishing line can be secured in the device (E) by passing it through eye (b) and then between the shanks (a) and the coil that forms the eye (b) so that it is secured within eye (b). (McMahon ll. 56-66).

9. McMahon explains that the device (E) allows a line to be quickly and easily secured, as well as quickly and easily disconnected when desired. (McMahon ll. 73-80).

Analysis

The Examiner rejected Appellant's claim 1 under 35 U.S.C. § 103(a) over Drusdak '652 and McMahon. In claim 1, Appellant recites an apparatus with two elements: (1) a body with a receptacle having inwardly directed extensions, and (2) a pair of resilient hooks that overlap in a continuous loop. (FF² 1). An embodiment of Appellant's claimed apparatus, depicted in Figure 2 of Appellant's specification, shows the receptacle and hooks (FF 2), while Figure 3 shows the teeth inside the receptacle (FF 3).

Drusdak '652 teaches a connector for a fishing line that has a socket, or receptacle, with inwardly extending teeth and an open end. (FF 4). The connector allows for easy attachment of a line, without the need for tying knots. (FF 5).

² Finding of fact.

McMahon teaches a fishing-line attachment device with an eye made of coiled, resilient wire. (FFs 6 and 7). The device of McMahon secures a line by passing it through the eye and between the coils (FF 8), so that the line can be easily and quickly secured, while also being easily and quickly disconnected (FF 9).

The devices of both Drusdak '652 and McMahon allow for easy attachment of a fishing line. If combined, these devices would also allow for the easy attachment of a fishing line at either side of the resulting device. Thus, one skilled in the art would have had a reason to combine the devices. In the absence of a showing that the combination yields more than predictable results, the combination is obvious. *See KSR*, 550 US at 416, 417. We are not persuaded by Appellant's argument that there is no teaching or suggestion in the prior art references to combine them. (*See App. Br. 9*).

Appellant argues that substituting the coupler (b) of McMahon with the coupler of Drosdak '652 "does not make the invention." (*App. Br. 9*). But, Appellant does not point to any element that is missing from the combination of the two couplers. Appellant has not persuaded us that the claimed apparatus would not have been obvious.

According to Appellant, Drosdak '652 "teaches away" from McMahon because Drosdak '652 expressly teaches that it is for connecting a leader and a fly line and because it teaches that the connector can have various shapes or styles, as long as there is a female threaded socket present. (*App. Br. 9-10*). To the extent Appellant is arguing that the embodiments taught in Drosdak '652 teach away from the device of McMahon, we do not find this argument persuasive. That Drosdak '652 teaches alternative

embodiments does not mean that it teaches away from an embodiment that renders the claimed apparatus obvious. *See Syntex LLC v. Apotex, Inc.* 407 F.3d 1371, 1380 (Fed. Cir. 2005) (“Under the proper legal standard, a reference will teach away when it suggests that the developments flowing from its disclosures are unlikely to produce the objective of the applicant’s invention.”); *see also In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Claim 38

Findings of Fact

10. Appellant’s claim 38 recites:

Apparatus for receiving and securing an end segment of a line comprising:

a body including a receptacle having inwardly directed extensions, an open first end leading to the receptacle and an opposing second end;

the receptacle capable of receiving therein and the extensions impinging thereagainst the end segment; and

a pair of opposing plates attached to the second end of the body and biased together and prongs carried by and between the plates capable of securing a hook eye of a lure.

(App. Br. 22, Claims App’x.).

11. Figure 1 of Drosdak ‘767 is reproduced below.

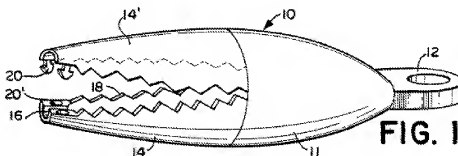


Figure 1 depicts a fly line connector (10) with a body (11) (Drosdak ‘767 col. 2, ll. 59-60) and opposing jaws, or plates, (14 and 14’) with teeth (18) that can grip a fishing line (Drosdak ‘767 col. 3, ll. 3-8).

12. Drosdak teaches that the connector allows for rapid changing of leaders of a fly line without tying knots. (Drosdak ‘767 col. 1, ll. 61-63).

Analysis

The Examiner rejected Appellant’s claim 38 under 35 U.S.C. § 103(a) over Drusdak ‘652 and Drusdak ‘767. Appellant’s claim 38 recites an apparatus with two elements: (1) a body with a receptacle having inwardly directed extensions, and (2) a pair of opposing plates biased together with prongs between the plates. (FF 10).

The connector of Drusdak ‘652, which attaches a fishing line, has been discussed above and teaches element (1) of Appellant’s claimed apparatus.

Drusdak ‘767 teaches a fishing line connector with opposing plates attached to an end, wherein the opposing plates have teeth that can grip a fishing line. (FF 11). Appellant does not contest that the ability to grip a fishing line indicates that the plates are capable of securing a hook eye of a lure. Thus, Drosdak ‘767 teaches element (2) of Appellant’s claimed apparatus.

The devices of both Drusdak ‘652 and Drosdak ‘767 allow for easy attachment of a fishing line, without tying knots. If combined, these devices would also allow for the easy attachment of a fishing line at either end of the resulting device. In the absence of a showing that the combination yields more than predictable results, the combination is obvious. *KSR*, 550 US at

416, 417. Thus, we are not persuaded by Appellant's argument that there is no teaching or suggestion in the prior art reference to combine them. (*See* App. Br. 15).

Appellant argues that the rejection requires substituting the coupler of Drosdak '767³ with a threaded female socket of Drosdak '652, but that this new apparatus is not the claimed apparatus. (App. Br. 15). Appellant has not pointed to any claimed element that is missing when the connector of Drosdak '652 is combined with the connector of Drosdak '767. Thus, Appellant's argument that the claimed apparatus would not have been obvious over both prior art references is not persuasive.

Appellant also argues that Drosdak '652 teaches away from the combination for the same reasons Appellant argued that it taught away from a combination with McMahon because Drosdak '652 includes embodiments that would not result in the claimed device when combined with Drosdak '767. Appellant does not point to any teaching regarding the alternative embodiments in Drosdak '652 that would suggest to those in the art that the combination of disclosures are unlikely to produce the objective of the applicant's invention. Thus, Drosdak '652 does not "teach away" from a combination with Drosdak '767. *See Gurley*, 27 F3d at 553; *Syntex*, 407 F.3d at 1380.

IV. ORDER

Upon consideration of the record and for the reasons given,

³ Appellant actually wrote: "replacing McMahon's coupler 14, 14' with a threaded female socket of Drosdak '652." (App. Br. 15). We understand "McMahon" to be a typographical error because McMahon has no element 14 or 14', while Drosdak '767 does.

the rejection of claims 1-3 and 37 under 35 U.S.C.
§ 103(a) over McMahan and Drosdak '652 is AFFIRMED; and
the rejection of claims 38-41 under 35 U.S.C. § 103(a) over Drosdak
'767 and Drosdak '652 is AFFIRMED.

FURTHER ORDERED that no time period for taking any subsequent
action in connection with this appeal may be extended under
37 C.F.R. § 1.136(a).

AFFIRMED

ack

cc:

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